

ITEL

RECORDATION NO. 9756-I FILED 1425

4-075A027

February 29, 1984

MAR 15 1984 11 00 AM

Istel Rail Corporation

55 Francisco
San Francisco, California 94133
(415) 955-9090
Telex 34234

Mr. James H. Bayne, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

No.
Date MAR 15 1984

Fee \$ 10.00

ICC Washington, D.C.

Dear Mr. Bayne:

Pursuant to 49 U.S.C. Section 11303(a) and the Interstate Commerce Commission's rules and regulations thereunder, I enclose herewith on behalf of Istel Corporation for filing and recordation under the Lease Agreement dated as of April 26, 1978 between Istel Corporation, Rail Division and East Camden and Highland Railroad Company which was filed on October 11, 1978 at 3:45 p.m. and given recordation number 9756, four counterparts of the following document:

Amendment No. 7 dated October 12, 1983 to the Lease Agreement dated April 26, 1978 between Istel Corporation, Rail Division and East Camden and Highland Railroad Company.

The names and addresses of the parties to the aforementioned Amendment are:

1. East Camden and Highland Railroad Company
Box 3180
East Camden, Arkansas 71701
2. Istel Rail Corporation
55 Francisco, 7th Floor
San Francisco, California 94133

The equipment covered by this Amendment is fifty (50), 50' boxcars bearing reporting marks from within the series EACH 2351-2500.

Also enclosed is a check in the amount of \$10.00 for the required recording fee.

Please stamp all counterparts of the enclosed Amendment with your official recording stamp. You will wish to retain one (1) counterpart of the document for your files; it is requested that the remaining three (3) counterparts be returned to the bearer of this letter.

Sincerely,

Kathryn M. Thyret

Kathryn M. Thyret
Legal Assistant

KMT/csh
Enclosures
cc: Robert S. Clark, Esq.

Virginia Hanger
Istel Rail Corporation

RECEIVED
MAR 15 10 53 AM '84
I.C.C.
FEE OPERATION BR.

*We think this
will be
9756-I,
but please check.*

*(1) Enclosed for
Laura Jean Bayne*

3/15/84

OFFICE OF THE SECRETARY

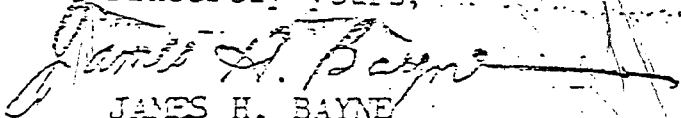
Kathryn M. Thyret
Itel Rail Corp.
55 Francisco
San Francisco, Calif. 94133

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/15/84 at 11:00am and assigned recordation number(s). 9756-I

Sincerely yours,


JAMES H. BAYNE

Secretary

Enclosure(s)

L-0555
10/20/83

REGISTRATION NO. 9756-1 Filed 1425

MAR 15 1984 - 11 00 AM

AMENDMENT NO. 7

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 7 (the "Amendment") to that certain Lease Agreement (the "Agreement") made as of April 26, 1978 between Itel Corporation, Rail Division and EAST CAMDEN AND HIGHLAND RAILROAD COMPANY ("Lessee") is made this 12th day of October, 1983, by and between ITEL RAIL CORPORATION, as successor in interest to Itel Corporation, Rail Division ("Itel Rail") and Lessee.

WHEREAS, Itel Rail and Lessee are parties to the Agreement, pursuant to which five hundred (500) boxcars ("Car(s)") described therein have been leased by Itel Rail to Lessee;

WHEREAS, Itel Rail and Lessee agree that it is to their mutual benefit for Lessee to enter into a sublease agreement with a third party for a certain number of Cars for a period of time to improve the utilization of and revenue from the Cars.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties agree to amend the Agreement as follows:

1. All terms defined in the Agreement shall have their defined meanings when used in this Amendment.
2. Itel Rail consents to Lessee's entering into a sublease agreement (the "Sublease") with Green Bay and Western Railroad Company ("Sublessee") for up to fifty (50) of the Cars bearing reporting marks within the series EACH 2351-2500 ("Boxcar(s)") for a period of time to improve the utilization of and revenue from the Boxcars.
3. The term of the Sublease with respect to each Boxcar shall commence at 12:01 P.M. on the date and at the location that such Boxcar is remarked with the Sublessee's reporting marks and shall continue as to all the Boxcars described on each Schedule for one (1) month from the date on which the first Boxcar on such Schedule was remarked ("Initial Sublease Period"). If the Sublease has not been terminated early and no unremedied default has occurred pursuant to Section 8, the Sublease at the end of the Initial Sublease Period, shall automatically be extended for consecutive periods of one (1) month each ("Extended Sublease Period(s)") with respect to all of the Boxcars described on each Schedule; provided, however, that Lessee or Sublessee may terminate the Sublease at the end of the Initial Sublease Period or any Extended Sublease Period as to all, but not fewer than all, of the Boxcars on the Schedules by written notice delivered to the other not less than thirty (30) days prior to the end of the Initial Sublease Period or any Extended Sublease Period.
4. The restencilling, delivery and return of the Boxcars pursuant to the Sublease, shall be performed by Lessee at Itel Rail expense. Concurrent with any restencilling at the commencement, expiration or early termination of the Sublease, Lessee shall provide Itel Rail with a Certificate of Remarketing (in the form of Exhibit A attached hereto) specifying the previous and current reporting marks for each Boxcar remarked pursuant to the Sublease. Such Certificate of Remarketing shall become attached to and incorporated into this Amendment.

5. During the Initial Sublease Period or any Extended Sublease Period, Section 4 of the Agreement, as it now reads ("Old Section 4") shall be replaced by the following solely with respect to the Boxcars:

"4. Record Keeping

- A. Lessee shall, at its expense, prepare and file, with respect to the Boxcars, all documents relating to the registration, maintenance and record keeping functions normally performed by a railroad with respect to railroad equipment of the type subject to this Agreement. Such matters shall include, but are not limited to, (i) preparation of appropriate AAR interchange agreements with respect to the Boxcars; (ii) registration of the Boxcars in the Official Railway Equipment Register ("UMLER"); and (iii) preparation of any reports as may be required from time to time by the Interstate Commerce Commission ("ICC") and/or any other regulatory agencies with respect to the Boxcars. Lessee shall register each Boxcar in UMLER in such a manner that Itel Rail is allowed access to any required information with regard to each Boxcar. In addition, Lessee shall be responsible for any expenses incurred and rent lost as a result of any improper UMLER registration.
- B. Lessee shall perform all record keeping functions relating to the use of the Boxcars by Lessee and other railroads, including, but not limited to, car hire reconciliation, collection and receipt of Revenues (as hereinafter defined in Section 6) from other railroad companies, maintenance and repair, and billing in accordance with AAR railroad interchange agreements and rules. All record keeping performed by Lessee hereunder and all records of payments, charges and correspondence relating to the Boxcars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Itel Rail from time to time during regular business hours. Lessee shall supply Itel Rail with copies of such reports, including daily telephone reports, of the number of Boxcars in Lessee's possession or control."

Upon the expiration or termination of the Sublease, Old Section 4 shall be reinstated in the Agreement with respect to the Boxcars.

6. During the Initial Sublease Period or any Extended Sublease Period, Section 6 of the Agreement, as it now reads ("Old Section 6") shall be replaced by the following solely with respect to the Boxcars:

"6. Lease Rental

A. Definitions

- (i) "Revenues" shall be the total revenues earned and due from other railroad companies for the use or handling of the Boxcars, whether or not collected and received by Lessee and without regard to any claimed abatement, reduction or offset, provided, however, that upon the occurrence of any such abatement, reduction or offset, Lessee shall, within ten (10) days of Itel Rail's request, reimburse Itel Rail for any such amounts.

(ii) The "Utilization Rate" of the Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar year that Revenues were earned on the Boxcars commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each calendar year that the Boxcars are on lease to Lessee, commencing from the Initial Loading.

(iii) The "Base Rental" shall be defined as the sum equal to the Revenues which the Boxcars would have earned in the aggregate at a Utilization Rate of forty (40) percent.

B. Itel Rail shall receive all Revenues earned by the Boxcars prior to the Initial Loading.

C. Lessee agrees to pay the following rent to Itel Rail for the use of the Boxcars:

(i) In the event that Revenues in any calendar year or applicable portion thereof are equal to Base Rental, Lessee shall pay to Itel Rail an amount equal to one hundred (100) percent of the total Revenues, except as provided below.

(ii) In the event Revenues earned in any calendar year or applicable portion thereof exceed the Base Rental, Lessee shall retain an amount equal to such Base Rental and Itel Rail shall receive all Revenues, except as provided below, received in excess of such Base Rental.

(iii) As to all mileage revenues earned, Lessee shall retain an amount equal to fifty (50) percent of all such revenues and Itel Rail shall receive the remaining fifty (50) percent of all such revenues.

D. The calculations required in Subsection 6.C. shall be made within five (5) months after the end of each calendar year ("Final Calculations"). In order that Itel Rail may meet its financial commitments, Lessee shall pay to Itel Rail by the seventy-fifth (75th) day after the end of each Service Month (as hereinafter defined), eighty (80) percent of the total Revenues for such Service Month. For the purposes hereof, Service Month shall be defined as the calendar month in which Revenues were actually earned. At the time payment of eighty (80) percent of the total Revenues is made to Itel Rail, Lessee shall report to Itel Rail for the same month, the hours earned, miles traveled and dollar figure for one hundred percent (100%) of the Revenues. Ten (10) percent of the Revenues shall be remitted to Itel Rail within one hundred five (105) days after the end of each Service Month and the remaining ten (10) percent of the total Revenues shall be remitted to Itel Rail within one hundred thirty-five (135) days after the end of each Service Month. Itel Rail shall within three (3) months after the end of each calendar quarter, calculate on a quarterly year-to-date basis, the approximate amount, if any, due either party pursuant to this Section. Any amounts payable pursuant to the preceding sentence shall be paid promptly following such calculations, provided, however, that within twenty (20) days following the Final Calculation, any amount paid to either party in excess of the amounts required shall be refunded to the appropriate party.


- E. If, with respect to any calendar quarter, Revenues are less than the Base Rental, Itel Rail may, at any time, at its option and upon not less than ten (10) days prior written notice to Lessee, terminate this Agreement as to such Boxcars as Itel Rail shall determine; provided, however, that Lessee may, at its option, within ten (10) days of receipt of such notice from Itel Rail, void such termination notice by paying to Itel Rail an amount equal to the difference between actual Revenues for such calendar quarter and the Base Rental for such calendar quarter.
- F. If, subsequent to the Initial Loading, any Boxcar remains on Lessee's railroad tracks for more than seven (7) consecutive days, excluding those days such Boxcar is undergoing servicing, repair or alteration as provided for in Section 5, unless such servicing, repair or alteration was occasioned by the fault of Lessee, Itel Rail may, at its option and upon not less than twenty-four (24) hours prior written notice, terminate this Agreement as to such Boxcar and take possession of such Boxcar on Lessee's railroad tracks. If any such Boxcar has remained on Lessee's railroad tracks for more than seven (7) consecutive days because Lessee has not given preference to the Boxcars as specified in Subsection 3.B., Lessee shall be liable for and remit to Itel Rail an amount equal to the Revenues which would have been generated if such Boxcar had been in the physical possession and use of another railroad for the entire period during which such Boxcar is on Lessee's railroad line.
- G. In the event damage beyond repair or destruction of a Boxcar has been reported in accordance with Rule 107 of the AAR Field Manual of the Interchange Rules and Rule 7 of the AAR Code of Car Hire Rules and Interpretations-Freight, said destroyed Boxcar will be removed from the rental calculations of this Agreement on the date car hire ceased as set forth in the aforementioned Rule 7. Itel Rail may, at its expense, replace any destroyed Boxcar with similar equipment upon prior written notice from Itel Rail to Lessee.
- H. In the event the Interstate Commerce Commission issues an order which eliminates, reduces, or modifies mandatory per diem and mileage payments to the boxcar owner by the boxcar user for its use of such boxcars, as currently established, Itel Rail may, at its option, terminate this Agreement."

Upon the expiration or termination of the Sublease, Old Section 6 shall be reinstated in the Agreement with respect to the Boxcars.

- 7. Except as expressly modified by this Amendment, all terms and provisions of the Agreement shall remain in full force and effect with respect to all of the Cars subject to the Agreement, including the Boxcars.

8. This Amendment may be executed by the parties hereto in any number of counterparts and all said counterparts taken together shall be deemed to constitute one and the same instrument.

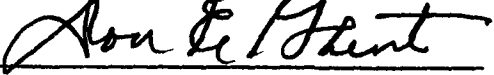
ITEL RAIL CORPORATION

By: 

Title: President

Date: 11/10/83

EAST CAMDEN AND HIGHLAND
RAILROAD COMPANY

By: 

Title: EXE. VICE-PRESIDENT

Date: NOVEMBER 1, 1983

L-0555

EXHIBIT A

CERTIFICATE OF REMARKING

<u>Old Boxcar Marks</u>	<u>New Boxcar Marks (at commencement of Sublease)</u>	<u>Date of Remarking</u>	<u>New EACH Boxcar Marks (pursuant to expiration of Sublease)</u>	<u>Date of Remarking</u>
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Itel Rail Corporation
Authorized Representative



East Camden and Highland
Railroad Company
Authorized Representative

L-0555

EXHIBIT A (continued)

CERTIFICATE OF REMARKING

<u>Old Boxcar Marks</u>	<u>New Boxcar Marks (at commencement of Sublease)</u>	<u>Date of Remarking</u>	<u>New EACH Boxcar Marks (pursuant to expiration of Sublease)</u>	<u>Date of Remarking</u>
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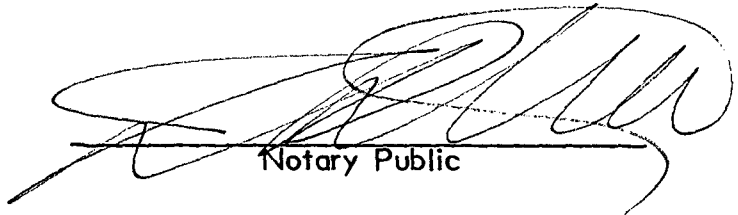
Itel Rail Corporation
Authorized Representative

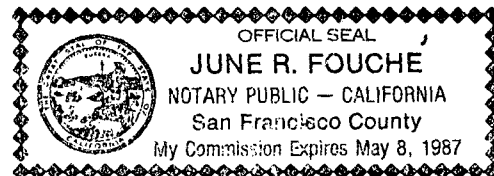


East Camden and Highland
Railroad Company
Authorized Representative

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO) ss:

On this 22 day of November, 1983, before me personally appeared Edward M. O'Dea, to me personally known, who being by me duly sworn says that such person is President of Itel Rail Corporation, that the foregoing Amendment No. 7 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

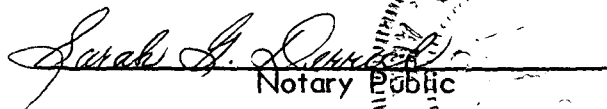

Notary Public



STATE OF ARKANSAS)
)
COUNTY OF OUACHITA) ss:

On this 1st day of NOVEMBER, 1983, before me personally appeared DON E. GHENT, to me personally known, who being by me duly sworn says that such person is EXE. VICE-PRESIDENT of East Camden and Highland Railroad Company, that the foregoing Amendment No. 7 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

MY COMMISSION EXPIRES 11-15-84


Notary Public